

No. 12408

United States
Court of Appeals
For the Ninth Circuit.

HERBERT BROWN and FEATURE RING CO.,
Appellants,
vs.

GRANAT BROS., a corporation,
Appellee.

GRANAT BROS., a corporation,
Appellant,
vs.

HERBERT BROWN and FEATURE RING CO.,
INC.,
Appellees.

Transcript of Record
IN FOUR VOLUMES
Volume I
(Pages 1 to 35)

Appeals from the United States District Court,
Northern District of California,
Southern Division.

FILED

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FAUL P. O'BRIEN,

CLERK

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HERBERT BROWN and FEATURE RING CO.,
Appellants,
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fendant and Appellants and Cross-Appellees.

MELLIN and HANSCOM,

OSCAR A. MELLIN,

LEROY HANSCOM,

JACK E. HURSH,

391 Sutter Street,
San Francisco, California.

In the United States District Court, Northern
District of California, Southern Division

Civil Action No. 28220-H

GRANAT BROS., a corporation,

Plaintiff,

vs.

HERBERT BROWN, an individual,

Defendant.

COMPLAINT FOR TRADE-MARK INFRINGEMENT
AND UNFAIR COMPETITION

Comes Now the above named plaintiff and for
cause of action against the defendant above named,
complains and alleges as follows:

I.

Plaintiff alleges that it is a corporation duly
organized and existing under and by virtue of the
laws of the State of California, and has a place of
business in the City and County of San Francisco,
State of California.

II.

Plaintiff is informed and believes and on infor-
mation and belief alleges that the defendant Her-
bert Brown is an individual and is a resident of
Salinas, County of Monterey, State of California,
and is there doing business.

III.

Plaintiff alleges that this Court has jurisdiction of this cause in that it arises under the trade-mark laws of the United States concerning infringement of trade-marks duly registered under the laws of the United States, and that the value of the matter in controversy, exclusive of interest, exceeds the amount of \$3,000.00.

IV.

Plaintiff alleges that it is the owner of all the right, title and interest in and to the trade-mark "Wedlock," and that said trade-mark "Wedlock" was registered in the United States Patent Office on June 10, 1924, certificate of registration No. 185,365, and that said certificate registration was assigned to plaintiff together with the good-will of the business in said trade-mark, and that plaintiff, ever since the assignment thereof, has been and now is the owner of all the right, title and interest therein and thereto.

V.

Plaintiff alleges that it is the owner of all the right, title and interest in and to the trade-mark "Wed-Lok"; that said trade-mark "Wed-Lock" was registered by said plaintiff in the United States Patent Office for finger rings, and said registration bears No. 430,436, and is dated June 10, 1947.

VI.

Plaintiff further alleges that said trade-marks

have been applied by plaintiff to finger rings sold in interstate commerce by said plaintiff continuously since the year 1934.

VII.

Plaintiff alleges that it is now engaged in and for many years past has been continuously engaged in the business of designing, manufacturing and selling finger rings, to which said trade-marks have been applied, throughout the entire United States of America, its territories and possessions, and has built up a large and enviable reputation and goodwill in connection with said business, and that the value of said good-will is in excess of \$25,000,000.00, and that the said trade-mark is applied to its said finger rings or to packages containing the same.

VIII.

Plaintiff alleges that it has spent large sums of money in advertising its said trade-marked finger rings throughout the entire United States of America, and since the year 1934 the sums so spent total in excess of \$100,000.00, and that said advertising consists solely in advertising of its finger rings known and trade-marked with plaintiff's said trade-marks.

IX.

Plaintiff alleges that the retail sales value of its finger rings so trade-marked and sold by plaintiff exceeds the sum of \$2,500,000.00.

X.

Plaintiff alleges that for more than twelve (12) years last past its said trade-marks have been understood by the public and the trade as designating the finger rings and business of the plaintiff, and has been so exclusively identified with the finger rings and business of plaintiff as to have acquired a secondary meaning as to indicate the finger rings and business of plaintiff and its alone.

XI.

Plaintiff alleges that the defendant is in the business of retail selling finger ring sets consisting of a wedding band and engagement ring, which defendant identifies by the use of the words "Feature-Lock," and has thereby infringed upon the trademark rights of this plaintiff.

XII.

Plaintiff alleges that the said ring sets sold by this plaintiff under its trade-marks and the ring sets sold by this defendant under the name "Feature-Lock" are goods of the same character and are directly competitive products.

XIII.

Plaintiff alleges that the mark used by defendant "Feature-Lock" and the plaintiff's trade-marks are so confusingly similar that the purchasing public is likely to be deceived, and that the "Feature-Lock"

finger ring sets of defendant can be palmed off on the public as the finger ring sets of this plaintiff.

XIV.

Plaintiff alleges that the mark "Feature-Lock" used by defendant is confusingly similar to plaintiff's said trade-marks.

XV.

Plaintiff alleges that the mark "Feature-Lock" applied by defendant to finger rings would cause confusion in the minds of the purchasing public who would believe that the finger ring sets sold under the said mark were the finger ring sets of this plaintiff.

XVI.

Plaintiff is informed and believes and on information and belief alleges that the words "Feature-Lock" have been and are being applied by defendant to finger rings with fraudulent intent on the part of the defendant to pass off its said finger rings as and for the finger ring sets of plaintiff with the purpose to deceive the public and enable the defendant to trade on the name and good-will of plaintiff.

XVII.

Plaintiff alleges that the defendant's use of the words "Feature-Lock" on its products have caused and will continue to cause confusion between the finger ring sets of plaintiff and defendant, and that

such confusion likely will have the effect of destroying the business, good-will and reputation heretofore established by plaintiff, all to the damage of plaintiff.

XVIII.

Plaintiff is informed and believes and on information and belief alleges that unless restrained by this Court, the defendant will continue to infringe on the rights of plaintiff and continue defendant's acts of unfair competition, all to the irreparable injury of plaintiff.

XIX.

Plaintiff alleges that it has no other speedy and adequate remedy save by this suit for an injunction.

XX.

Plaintiff is informed and believes and on information and belief alleges that defendant has derived unlawful gains and profits from his infringing acts, aforesaid, which plaintiff would otherwise have received but for such infringement by defendant.

XXI.

Plaintiff is informed and believes and on information and belief alleges that the acts of the defendant herein set forth have caused damage to plaintiff's business in an amount that cannot at this time be determined but is informed and believes and on information and belief alleges that said damage is in an amount in excess of \$5,000.00.

Wherefore Plaintiff Prays:

1. That defendant be required to appear and answer this complaint.

2. That a permanent injunction issue out of and under the seal of this Court, enjoining the defendant, his associates, officers, attorneys, clerks, servants, agents, employees and confederates, and each of them, from using the trade-mark "Feature-Lock" in any fashion whatsoever in connection with any business or products relating to finger rings.

3. For an accounting of profits and damages for the acts of trade-mark infringement committed by the defendant.

4. That plaintiff have and recover from defendant its actual damages sustained by reason of the infringement and unfair competition of defendant.

5. That said profits and damages be trebled in view of defendant's deliberate, intentional and fraudulent infringement and interference with the business of plaintiff.

6. That plaintiff have its costs and disbursements herein and for such other and further or different relief that the Court may deem appropriate in the premises.

GRANAT BROS.,

A Corporation,

By /s/ OSCAR A. MELLIN, Of
MELLIN and HANSCOM,
Attorneys for Plaintiff.

[Endorsed]: Filed August 3, 1948.

STIPULATED INTERVENTION OF FEATURE
RING CO., INC., AS DEFENDANTS

(See No. 12407, Vol. I, page 11)

CONSOLIDATED ANSWER AND
COUNTERCLAIM

(See No. 12407, Vol. I, page 12)

REPLY TO DEFENDANTS' COUNTERCLAIM

(See No. 12407, Vol. I, page 33)

STIPULATION CONSOLIDATING CASES
FOR TRIAL

(See No. 12407, Vol. I, page 9)

ORDER DATED JULY 8, 1949

(See No. 12407, Vol. I, page 36)

REQUEST FOR ADMISSIONS UNDER
RULE 36

(See No. 12407, Vol. I, page 62)

PLAINTIFF'S ADMISSIONS AND DENIALS
IN RESPONSE TO DEFENDANT'S RE-
QUEST FOR ADMISSIONS UNDER
RULE 36

(See No. 12407, Vol. I, page 68)

District of California, Southern Division
District Court of the United States, Northern

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 23rd day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris,
District Judge.

ORDERED CASES CONSOLIDATED FOR
TRIAL

Civ. No. 28219-H, Granat Bros., etc. vs. Samuel H. Friend, et al.;

Civ. No. 28220-H, Granat Bros., etc. vs. Herbert Brown, etc.;

In accordance with a stipulation and order this day filed, it is Ordered that these cases be and the same are hereby consolidated for trial.

In the United States District Court, Northern
District of California, Southern Division.

Civil Action No. 28220-H

GRANAT BROS., a corporation,

Plaintiff,

vs.

HERBERT BROWN, an individual,

Defendant,

and

FEATURE RING CO., INC,

Intervening Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Rule 52 of the Federal Rules of Civil Procedure and Rule 5(e) of the Rules of Practice of the District Court of the United States for the Northern District of California, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

That plaintiff, Granat Bros., is a corporation duly organized and existing under and by virtue of the laws of the State of California, and has a place of business in the City and County of San Francisco, State of California.

II.

That defendant, Herbert Brown, is a resident of Salinas, County of Monterey, State of California and has a place of business at Salinas, County of Monterey, State of California.

III.

That the intervening defendant, Feature Ring Co., is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and has a place of business in the City of New York, State of New York.

IV.

That plaintiff is the owner of all of the right, title and interest in and to the trade-mark "Wed-Lok" and that plaintiff registered the trade-mark "Wed-Lok" in the United States Patent Office for finger rings, said registration bearing No. 430,436, dated June 10, 1947.

V.

That plaintiff adopted the trade-mark "Wed-Lok" for wedding ensembles in the year 1934 and commenced to use the same at that time.

VI.

That plaintiff applied the trade-mark "Wed-Lok" to finger rings and wedding ensembles and said finger rings and wedding ring ensembles were sold in interstate commerce over the entire United

States by plaintiff continuously since at least the year 1936.

VII.

That plaintiff has never abandoned the trade-mark "Wed-Lok".

VIII.

Plaintiff's trade-mark "Wed-Lok" is not primarily descriptive of the ring ensembles marketed and sold by plaintiff, but it is used in a suggestive or figurative sense and is a valid registered trade-mark.

IX.

That plaintiff has been the exclusive user of the trade-mark "Wed-Lok" continuously since at least the year 1936.

X.

That plaintiff made extensive sales of its products trade-marked "Wed-Lok" throughout the entire United States from the year 1934 to date, and such sales in the trade-marked products were in the amount of approximately Three Million Dollars (\$3,000,000.00).

XI.

That plaintiff's trade-marked products, "Wed-Lok" and the trade-mark "Wed-Lok" have been widely and very extensively advertised throughout the United States from the year 1934 to the present, excluding the war years of 1942, 1943, 1944 and

1945; and such advertising, exclusive of extensive dealer advertising, cost approximately One Hundred Fifty Three Thousand Dollars (\$153,000.00).

XII.

That in addition to plaintiff's advertising of trade-mark products "Wed-Lok" plaintiff's dealers throughout the United States extensively advertised them in local papers.

XIII.

That the words "Feature Lock" are sufficiently distinct from "Wed-Lok" as to preclude likelihood that the Feature Ring Co.'s product will be passed off as those of plaintiff.

XIV.

The evidence fails to show confusion in the ultimate customers between the products marked "Feature Lock" and plaintiff's products marked "Wed-Lok", and neither trade-mark infringement nor unfair competition is established.

XV.

That the notices sent by plaintiff to customers of defendant, Feature Ring Co., were sent in good faith and suit was brought by plaintiff seasonably after sending the notices.

XVI.

That the evidence establishes that plaintiff did not unfairly compete with the Feature Ring Co.

Conclusions of Law

I.

That plaintiff is the owner of the trade-mark "Wed-Lok" as applied to wedding ring ensembles.

II.

That the trade-mark "Wed-Lok" is a distinctive and valid trade-mark.

III.

That plaintiff is the owner of Trade-Mark Registration No. 430,436, dated June 10, 1947, and said registration is good and valid in law.

IV.

That this Court has jurisdiction of this cause in that the same is founded upon the trade-mark laws of the United States.

V.

That no confusion was shown between the ultimate customers of plaintiff and defendants and therefore plaintiff failed to establish trade-mark or unfair competition by defendants.

VI.

That the trade-mark "Feature Lock" does not infringe upon the trade-mark "Wed-Lok".

VII.

That the defendants have not unfairly competed with the plaintiff.

VIII.

That the plaintiff has not unfairly competed with the defendant, Feature Ring Co.

IX.

That no damages were proved by any of the parties hereto.

X.

That each party shall bear its own costs.

DAL M. LEMMON,

Judge of the District Court.

Receipt of copy acknowledged.

Lodged September 8, 1949.

[Endorsed]: Filed September 14, 1949.

In the United States District Court, Northern
District of California, Southern Division

Civil Action No. 28220-H

GRANAT BROS., a Corporation,

Plaintiff,

vs.

HERBERT BROWN, an Individual,

Defendant,

and

FEATURE RING CO., INC.,

Intervening Defendant.

JUDGMENT

This cause having come on to be heard upon the issues raised by the Complaint, Consolidated Answer and Counterclaim and Reply to Defendant's Counterclaim, and the Court having filed its Findings of Fact and Conclusions of Law, it is ordered adjudged and decreed:

I.

That plaintiff, Granat Bros., is a corporation duly organized and existing under and by virtue of the laws of the State of California, and has a place of business in the City and County of San Francisco, State of California.

II.

That defendant, Herbert Brown, is a resident of Salinas, County of Monterey, State of California, and has a place of business at Salinas, County of Monterey, State of California.

III.

That the intervening defendant, Feature Ring Co., is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and has a place of business in the City of New York, State of New York.

IV.

That this Court has jurisdiction of this cause in that the same is founded upon the trade-mark laws of the United States.

V.

That plaintiff is the owner of all of the right, title and interest in and to the trade-mark "Wed-Lok" and that plaintiff registered the trade-mark "Wed-Lok" in the United States Patent Office for finger rings, said registration bearing No. 430,436, dated June 10, 1947.

VI.

That plaintiff's trade-mark "Wed-Lok" is a distinctive and valid trade-mark.

VII.

That defendants have in using the trade-mark "Feature Lock" not infringed upon plaintiff's trade-mark "Wed-Lok".

VIII.

That defendants have not unfairly competed with plaintiff.

IX.

That plaintiff has not unfairly competed with defendants, Feature Ring Co., Inc. and Herbert Brown.

X.

That the complaint of plaintiff herein be and the same is hereby dismissed as to defendants.

XI.

That the counterclaim of defendants, Feature Ring Co., Inc., S. Herbert Friend and Leonard V. Block be and the same is hereby dismissed as to plaintiff.

XII.

That no damages are to be awarded to any of the parties.

XIII.

That each party bear its own costs.

/s/ DAL M. LEMMON,
U. S. District Judge.

Receipt of copy acknowledged.

Lodged September 8, 1949.

[Endorsed]: Filed September 14, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES
COURT OF APPEALS FOR THE NINTH
CIRCUIT UNDER RULE 73(b)

Notice is hereby given that Herbert Brown and Feature Ring Co., Inc., defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the parts of the judgment entered in this action on September 15, 1949, which adjudge as follows:

“VI. That plaintiff's trade-mark ‘Wed-Lok’ is a distinctive and valid trade-mark.

IX. That plaintiff has not unfairly competed with defendants, Feature Ring Co., Inc. and Herbert Brown.

XI. That the counterclaim of defendants, Feature Ring Co., Inc., S. Herbert Friend and Leonard V. Block be and the same is hereby dismissed as to plaintiff.”

XII. Insofar as it fails to award damages to defendants herein on their counterclaim.

XIII. Insofar as it fails to award defendants their costs herein.

Dated: October 15, 1949.

NAYLOR and LASSAGNE,

JAS. M. NAYLOR,

JOHN VAUGHAN GRONER,

By /s/ JAS. M. NAYLOR,

Attorneys for Defendants.

[Endorsed]: Filed October 15, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Granat Bros., the Plaintiff above named, hereby appeals to the Court of Appeals for the Ninth Circuit from the following parts, and each thereof, of the judgment entered in this action on the 15th day of September, 1949:

- (a) Paragraph numbered VII of said judgment;
- (b) Paragraph numbered VIII of said judgment.

Dated: At San Francisco, California, this 14th day of October, 1949.

MELLIN AND HANSCOM,

By /s/ OSCAR T. MELLIN,

Attorneys for Plaintiff.

[Endorsed]: Filed October 15, 1949.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents, That we, Granat Bros., a corporation, as Principal, and Indemnity Insurance Company of North America, a corporation, as Surety, are held and firmly bound unto Herbert Brown, an individual, Defendant and Feature Ring Co., Inc., Intervening Defendant above named, in the full and just sum of Two Hundred Fifty and No/100 Dollars (\$250.00) to be paid to

the said Herbert Brown, an individual, Defendant and Feature Ring Co., Inc., Intervening Defendant, or their successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of October, 1949.

Whereas, lately, in the District Court of the United States for the Northern District of California, Southern Division, in a suit depending in said Court between Granat Bros., a corporation, Plaintiff and Herbert Brown, an individual, Defendant and Feature Ring Co., Inc., Intervening Defendant, a judgment was rendered against the Plaintiff and said Plaintiff has duly filed notice of appeal from said judgment:

Now, Therefore, the condition of the above obligation is such that if the said Plaintiff shall prosecute the appeal with effect and pay all costs if the appeal is dismissed, or the judgment affirmed, or such costs as the appellate court may award if the judgment is modified, then the above obligation to be void; otherwise to remain in full force and virtue.

GRANAT BROS., a corporation,
Principal.

INDEMNITY INSURANCE
COMPANY OF NORTH
AMERICA,

[Seal] By /s/ JAMES A. SMITH,
Attorney-in-Fact.

State of California,
San Francisco, County of San Francisco—ss.

On this 14th day of October in the year one thousand nine hundred and forty-nine before me Fred G. Ainslie, a Notary Public in and for the City and County of San Francisco, personally appeared James A. Smith, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the Indemnity Insurance Company of North America, and acknowledged to me that he subscribed the name of the Indemnity Insurance Company of North America thereto as principal, and his own name, as Attorney-in-fact.

[Seal] /s/ FRED G. AINSLIE,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires August 27, 1951.

Bond No. 124955, Premium for this Bond is
\$10.00 per annum.

[Endorsed]: Filed Oct. 15, 1949.

[Title of District Court and Cause.]

CONCISE STATEMENT OF THE POINTS ON
WHICH PLAINTIFF-APPELLANT IN-
TENDS TO RELY ON APPEAL

Comes now plaintiff-appellant, above-named, and
makes the following concise statement of the points

on which it intends to rely for appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment entered September 15, 1949, in the above-entitled cause.

1.

The Court erred in finding that the defendants in using the trade-mark "Feature Lock" did not infringe upon plaintiff's trade-mark "Wed-Lok."

2.

The Court erred in not finding that the defendants in using the trade-mark "Feature Lock" infringed upon plaintiff's trade-mark "Wed-Lok."

3.

The Court erred in finding that defendants have not unfairly competed with plaintiff.

4.

The Court erred in not finding that defendants have unfairly competed with plaintiff.

5.

The Court erred in not finding that plaintiff's trade-mark had acquired a secondary meaning identifying the goods of plaintiff and its goods alone.

6.

The Court erred in finding that the words "Feature Lock" are sufficiently distinct from the words

“Wed-Lok” as to preclude the likelihood that Feature Ring Co., Inc.’s products will be passed off as those of plaintiff’s.

7.

The Court erred in not finding that the words “Feature Lock” are not sufficiently distinct from the words “Wed-Lok” as to preclude the likelihood that Feature Ring Co., Inc.’s products will be passed off as those of plaintiff’s.

8.

The Court erred in concluding that it was necessary to show confusion between customers of plaintiff and defendants before plaintiff could establish trade-mark infringement by defendants.

9.

The Court erred in not concluding that it was not necessary to show confusion between customers of plaintiff and defendants before plaintiff could establish trade-mark infringement by defendants.

10.

The Court erred in concluding that it was necessary to show confusion between customers of plaintiff and defendants before plaintiff could establish unfair competition by defendants.

11.

The Court erred in not concluding that it was not necessary to show confusion between customers

of plaintiff and defendants before plaintiff could establish unfair competition by defendants.

MELLIN AND HANSCOM,

By /s/ OSCAR T. MELLIN,

LEROY HANSCOM,

JACK E. HURSH,

Attorneys for Plaintiff-
Appellant.

Proof of Service attached.

[Endorsed]: Filed Nov. 19, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this Court, or a true and correct copy of an order entered on the minutes of this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellant, to wit:

Complaint for Trade-Mark Infringement and Unfair Competition

Minute Order of August 23, 1948—Consolidating
Cases for Trial

Findings of Fact and Conclusions of Law
Judgment

Notice of Appeal to United States Court of Ap-
peals by Defendants

Notice of Appeal by Plaintiff

Bond on Appeal by Plaintiff

Concise Statement of the Points on Which Plain-
tiff-Appellant Intends to Rely on Appeal

Designation of Contents of Record on Appeal by
Plaintiff-Appellant.

In Witness Whereof, I have hereunto set my hand
and affixed the seal of said District Court this 22nd
day of November, A.D. 1949.

C. W. CALBREATH,
Clerk,

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING
TIME FOR DOCKETING APPEAL

It is hereby stipulated by and between counsel for the above entitled parties that the time for docketing the appeal in the above entitled cause may be extended to and including December 23rd, 1949.

NAYLOR and LASSAGNE,

JAS. M. NAYLOR,

JOHN VAUGHAN GRONER,

By /s/ JAS. M. NAYLOR,

Attorneys for Defendants.

OSCAR A. MELLIN,

LE ROY HANSCOM,

JACK E. HURSH,

By /s/ JACK E. HURSH,

Attorneys for Plaintiff.

ORDER

Good cause appearing therefor, attendant upon the preparation of the transcript of the record on appeal, it is hereby

Ordered that the time for docketing the appeal in the above entitled cause may be, and the same is

hereby extended to and including December 23rd, 1949.

Dated November 23rd, 1949.

/s/ LOUIS GOODMAN,
U. S. District Judge.

Certification

No previous extension by order or stipulation.

/s/ JAS. M. NAYLOR.

[Endorsed]: Filed Nov. 25, 1949.

In the United States District Court, Northern
District of California, Southern Division

Civil Action No. 28220-H

GRANAT BROS., a corporation,

Plaintiff,

vs.

HERBERT BROWN, an individual,

Defendant,

and

FEATURE RING CO., INC.,

Intervening Defendant.

STIPULATION RELATIVE TO
FILING OF APPEAL BOND

It is hereby stipulated by and between counsel
for the above-entitled parties that the defendants

may file their appeal bond herein, pursuant to Rules of Civil Procedure Rule 73(e) concurrently with the filing of this stipulation provided the same be filed prior to the docketing of the appeals with the Court of Appeals for the Ninth Circuit.

NAYLOR and LASSAGNE,
JAS. M. NAYLOR,
JOHN VAUGHAN GRONER,

By /s/ JAS. M. NAYLOR,
Attorneys for Defendants.

OSCAR A. MELLIN,
LE ROY HANSCOM,
JACK E. HURSH,

By /s/ JACK E. HURSH,
Attorneys for Plaintiff.

It is so Ordered this 28th day of November, 1949.

/s/ LOUIS GOODMAN,
U. S. District Judge.

[Endorsed]: Filed Nov. 28, 1949.

[Title of District Court and Cause.]

CONCISE STATEMENT OF POINTS ON
WHICH DEFENDANTS-APPELLEES AND
CROSS-APPELLANTS INTEND TO RELY

Come now defendants-appellees and cross-appel-
ON APPEAL

lants, above named, and make the following concise statements of the points on which they intend to rely to the United States Court of Appeals for the Ninth Circuit from the Judgment entered September 15th, 1949 in the above-entitled cause:

1. The Court erred in finding that plaintiff's trade-mark "Wed-Lok" is a distinctive and valid trade-mark.

2. The Court erred in not finding that plaintiff has competed unfairly with defendants Feature Ring Co., Inc. and Herbert Brown.

3. The Court erred in dismissing the counterclaim of the defendants Feature Ring Co., Inc. and Herbert Brown.

4. The Court erred in failing to award damages to defendants herein on their counterclaim.

5. The Court erred in failing to award defendants their costs incurred on the trial of the cause.

NAYLOR AND LASSAGNE,

JAS. M. NAYLOR,

JOHN VAUGHAN GRONER,

By /s/ JAS. M. NAYLOR,

Attorneys for Defendants-Appellees and Cross-Appellants.

Certificate of Service attached.

[Endorsed]: Filed Nov. 28, 1949.

**STIPULATION AND ORDER EXTENDING
TIME FOR DOCKETING APPEAL**

(See No. 12407, Vol. I, page 71)

**DEFENDANTS' DESIGNATION OF CON-
TENTS OF RECORD ON APPEAL**

(See No. 12407, Vol. I, page 56)

**PLAINTIFF'S COUNTER DESIGNATION OF
CONTENTS OF RECORD ON APPEAL**

(See No. 12407, Vol. I, page 58)

**DESIGNATION OF CONTENTS OF RECORD
ON APPEAL**

(See No. 12407, Vol. I, page 53)

[Title of District Court and Cause.]

**CERTIFICATE OF CLERK TO SUPPLEMENT
TO RECORD ON APPEAL**

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals enter in this Court, in the above-entitled case, and that they constitute the Supplement to the Record on Appeals herein, as designated by the parties, to wit:

Stipulation and Order Extending Time for Docketing Appeal

Defendants' Designation of Contents of Record on Appeal

Concise Statement of Points on Which Defendants-Appellees and Cross-Appellants Intend to Rely on Appeal

Stipulation Relative to Filing of Appeal Bond

Undertaking for Costs on Appeal

Plaintiff's Counter Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 21st day of December, A.D. 1949.

C. W. CALBREATH,
Clerk,

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12408. United States Court of Appeals for the Ninth Circuit. Herbert Brown and Feature Ring Co., Appellants, vs. Granat Bros., a corporation, Appellee. Granat Bros., a corporation, Appellant, vs. Herbert Brown and Feature Ring Co., Inc., Appellees. Transcript of Record. Appeals from the United States District Court for the Northern District of California, Southern Division.

Filed November 22, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 28220-H

GRANAT BROS., a corporation,

Appellant,

vs.

HERBERT BROWN, an individual,

Appellee,

and

FEATURE RING CO., INC.,

Intervening Appellee.

NOTICE OF ADOPTION OF STATEMENT
OF POINTS

Appellant hereby adopts as its Statement of Points, under Rule 19(6) on its Appeal the Concise Statement on Appeal, under Rule 75(a) appearing in the transcript of record certified by the Clerk of the District Court and filed herein.

Dated: November 25th, 1949.'

MELLIN AND HANSCOM,

By /s/ JACK E. HURSH,

Attorneys for Appellant.

Receipt of a copy of the within Notice of Adoption of Statement of Points is hereby acknowledged this 20th day of December, 1949.

NAYLOR & LASSAGNE

/s/ JAS. M. NAYLOR,

Attorneys for Appellee.

[Endorsed]: Filed Dec. 21, 1949.

[Title of Court of Appeals and Causes.]

DESIGNATION OF APPELLANT-
CROSS-APPELLEE

Appellant-Cross-Appellee, Granat Bros., hereby adopts the Designation of Contents of Record on Appeal and Plaintiff's Counter Designation of Contents of Record on Appeal in the United States District Court, and already a part of the record on Appeal herein, and in addition thereto, Exhibit JJJ—Deposition, Moritz Jacoby; Exhibit KKK—Deposition, Holly G. Jackson; Exhibit LLL—Deposition, Leonard B. Goldblatt; Exhibit MMM—Deposition, Philip Kleiger; Exhibit NNN—Deposition, Arthur A. Navarro; Exhibit OOO—Deposition, Charles Van Sipma; Exhibit PPP—Deposition, Norman Kirnes; Exhibit QQQ—Deposition, Harry Gamler and Exhibit RRR—Deposition, Benjamin J. Shapiro, as its designation on Appeal of the record to be printed.

Dated: Dec. 20, 1949.

MELLIN AND HANSCOM,

By /s/ JACK E. HURSH,

Attorneys for Appellant-
Cross-Appellee.

Receipt of copy acknowledged.

[Endorsed]: Filed Dec. 21, 1949.

